

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LORENA ALESSINA, HENRY ARGUDO,
JULIETA CAPPONI and JOHNNY WILLIAN
TORRES RIVERA

**ANSWER AND AFFIRMATIVE
DEFENSES**

Plaintiffs,

Case No: 1:21-cv-04537-ENV-VMS

-against-

EL GAUCHITO II CORP. d/b/a EL GAUCHITO I,
EL GAUCHITO V, INC. d/b/a EL GAUCHITO II,
MARIO CIVELLI, MARCELLO CIVELLI, and
VANESSA CIVELLI

Defendants.

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Defendants, by their attorney, Paul E. Kerson, Esq. of the Law Offices of Leavitt, Kerson
& Sehati, Esqs. as and for its Answer and Affirmative Defenses, states as follows:

ANSWER

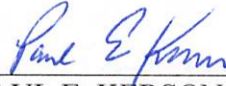
1. Defendants deny information sufficient to form a belief as to the truth of paragraphs 1, 3, 6, 51, 54 and 55 of the Complaint.
2. Defendants admit paragraphs 2, 4 and 5 of the Complaint.
3. Defendants deny paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 73, 74, 75, 77, 78, 79, 81, 82, 83, 85, 86, 87, 89, 90, 91, 93, 94, 95, 96, 98, 99, 101, 102, 103, 104, 106, 107, 108, 109, 110, 111, 113, 114, 115, 116, 117, 118, 120, 122, 123, 124, 126, 127, 128, 129, 130, 132, 133, 134, 135, 136, 138, 139 and 140 of the Complaint.

4. In paragraphs 72, 76, 80, 84, 88, 92, 97, 100, 105, 112, 119, 125, 131 and 137, Plaintiffs reallege and incorporates by reference certain allegations. For their Answers to these allegations, Defendants respectfully refer the Court to their Answers above.

AFFIRMATIVE DEFENSES

5. On May 10, 2021, Plaintiffs commenced a nearly identical action against these same Defendants in the New York State Supreme Court for Queens County under Index No. 710677/2021 for the very same relief three months before commencing the instant case on August 12, 2021. It is axiomatic that Plaintiffs cannot have two lawsuits pending in two different Courts for the exact same relief concerning the same money damages. For this reason alone, the instant Complaint must be dismissed immediately on the Court's own motion.
6. Defendants are in full compliance with the Fair Labor Standards Act 29 U.S.C. 201 et seq., the New York State Labor Law, Section 650 et seq., 12, NYCRR Section 146-1.4, 1.5 and 1.6., New York State Labor Law Section 195 and 198, 28 U.S.C. Section 1981, the New York State Human Rights Law, New York Executive Law Section 290 et seq., and the New York City Human Rights Law, and all other laws of the City of New York, the State of New York and the United States concerning the operation of a restaurant.

WHEREFORE, Defendants respectfully pray that the Complaint herein be dismissed in its entirety, together with the costs, interest, disbursements and attorneys' fees payable to Defendants in this matter.



PAUL E. KERSON, ESQ. (PEK-8789)

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Dated: September 29, 2021
Forest Hills, NY

VERIFICATION

STATE OF NEW YORK)
COUNTY OF QUEENS) ss:

MARIO CIVELLI, being duly sworn, deposes and says:

I am one of the Defendants in the above- named case. I have read the foregoing Answer and Affirmative Defenses. The same is true to my own knowledge, except as to those matters that are stated to be on information and belief, and as to those matters I believe it to be true.


MARIO CIVELLI

Sworn to before me this
29th day of September, 2021



Notary Public

LUIS F. ECHEVERRIA
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 02EC5016898
Qualified in Queens County
Commission Expires August 23, 2025